

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. (“SBC”) and AT&T Corp. (“AT&T”) for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T’s Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027

**ADMINISTRATIVE LAW JUDGE’S RULING  
ON THE DUAL MOTION OF THE GREENLINING INSTITUTE  
TO COMPEL RESPONSE OF SBC AND “CAREFULLY SCRUTINIZE”  
TESTIMONY FROM SBC PUBLIC HEARINGS**

This ruling addresses the dual motion of Greenlining Institute (“Greenlining”) for two matters relating to Section 854 of the California Public Utilities Code. The first matter is the Greenlining Motion to Compel Discovery Responses from SBC Communications Inc. (“SBC”). The second part of the Motion requests that the Commission “carefully scrutinize testimony” provided at the public participation hearings (PPHs) in this proceeding, in order to maintain the integrity of the public hearing process.

Greenlining filed the motion in written form, and also delivered oral argument in support of the motion at the Prehearing Conference (PHC) on

July 29, 2005. Applicants filed a written response and were also provided the opportunity to respond to the motion through oral argument at the PHC.

### **Motion to Compel Discovery**

#### **Position of Greenlining**

Greenlining argues that at the public participation hearings and throughout the media, SBC has portrayed itself as a leading corporate citizen whose good deeds are demonstrated by its philanthropy. However, in response to Greenlining's first data request on philanthropy, which was answered essentially in its entirety, SBC acknowledged that in 2004 only 6% of its alleged \$18 million (\$1,074,000) was awarded to what it termed "low-income nonprofits" in California.

After the initial discovery of what Greenlining characterizes as SBC's modest philanthropy, Greenlining served SBC with additional data requests – sets two, three, four, and five – seeking more detailed philanthropic information. SBC refused to respond. (These data requests were attached respectively as Exhibits B, C, and D to the Dual Motion.)

Greenlining argues that a significant segment of the individuals who spoke at the PPHs believe SBC's position that it gave out \$18 million in philanthropy in 2004 and that the company plans to increase that number in future years. Greenlining claims that this number appears to be greatly inflated and that SBC is taking credit for philanthropy that it did not give.

Greenlining claims that reliance on this misinformation increased the volume of participants in support of the merger, since philanthropy is an indicator of good corporate citizenship. According to SBC's data provided to Greenlining, 65% of the 600 PPH participants unconditionally supported the SBC/AT&T merger.

Since the time Greenlining identified these facts, SBC has refused to respond to additional data requests for detailed information on the company's philanthropic giving since discovery of its "one million dollar only to the poor" California philanthropic strategy.

Greenlining thus requests that the Commission compel SBC to fully and expeditiously respond to Greenlining's second, third, fourth, and fifth sets of data requests, attached to its Dual Motion respectively as Exhibits B, C, and D. In these sets of data requests, Greenlining asked SBC to provide detailed information regarding its philanthropy.

### **Response of Applicants**

Applicants oppose the motion to compel, arguing that Greenlining had ample opportunity to conduct discovery and served two sets of data requests, totaling 73 separate requests, before the June 24 discovery cut-off established by June 22 Ruling.<sup>1</sup> Greenlining propounded its "first set" of formal discovery on May 20 and received SBC's responses on June 6, three weeks before the June 24 discovery cut-off. Greenlining admits that its first set of formal discovery was related to philanthropy and that it "was answered essentially in its entirety." Motion, p. 2. Having received complete responses to its discovery, Greenlining waited eight weeks to next serve discovery on July 14 and 15 in the form of its

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<sup>1</sup> The ALJ's Ruling Denying Motion to Extend the Schedule and Granting in Part Discovery Limits, dated June 22, 2005, provides that "[p]arties shall be permitted to continue propounding discovery up until June 24, 2005. . . ." The ruling further provides that "parties shall be permitted to conduct additional discovery, as warranted, *relating to Applicants' Rebuttal Testimony*" but that "[d]iscovery relating to the Applicants' Rebuttal Testimony shall be served by July 15" (emphasis added).

second, third, and fourth sets of data requests,<sup>2</sup> which Greenlining claims are needed for the purported purpose of gathering “philanthropic information.” Motion, p. 2. These data requests were served three weeks after the close of general discovery and none of them “relat[e] to Applicants’ Rebuttal Testimony” as required by the ALJ’s June 22 Ruling. Greenlining served its fifth set of data requests on Friday, July 22, after the close of all discovery, and again Applicants claim that the requests in no way relate to the Applicants’ rebuttal testimony.<sup>3</sup>

### **Discussion**

The discovery requests that are the subject of the Greenlining motion to compel relate to requests that were submitted after the discovery cut-off deadline set by ALJ ruling. In the one instance where Greenlining submitted its request on time, Greenlining acknowledges that the questions about SBC philanthropic giving were “answered essentially in their entirety.” Yet, Greenlining has raised valid questions concerning SBC’s philanthropic giving policies that should be resolved. Accordingly, even though Greenlining did not meet the designated deadline for submitting discovery, the Applicants shall be required to provide responses to the designated outstanding requests expeditiously to Greenlining. In view of short time before hearings commence, and lateness of the requests, we will only require Applicants to produce responsive documents that are readily available.

Additionally, as noted in a separate ruling, Greenlining will be permitted to cross-examine a senior-level witness to be produced by the Applicants

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<sup>2</sup> Dorgan Decl., ¶¶ 2-3.

<sup>3</sup> Dorgan Decl., ¶ 4.

concerning its philanthropic giving levels and policies. Through such cross-examination, Greenlining will have a reasonable opportunity to develop the record concerning the issue of philanthropic giving and clarify the issues that it has raised through discovery. Accordingly, in order to make the most productive use of this cross-examination, Greenlining should be provided responses to its outstanding discovery items. Accordingly, the motion to compel is granted.

While Greenlining's motion is being granted in the interests of producing an adequate record on this issue, Greenlining should not view this ruling as condoning its failure to adhere to the adopted discovery schedule. Greenlining is admonished to adhere to the adopted schedule and processes henceforth.

**Proposal to Give Limited Weight to Any Testimony Unconditionally Supporting SBC Merger Subject to Certain Conditions**

**Position of Greenlining**

In view of the concerns discussed above relating to what Greenlining characterizes as misinformation concerning SBC's level of philanthropic giving, Greenlining raises the question as to whether expressions of support for the merger at the PPHs could have been erroneously motivated by such incorrect assumptions. Greenlining, in the second part of its motion, thus requests that the Commission give very limited weight to any testimony that unconditionally supports the SBC merger unless SBC can demonstrate that the individual or organization testifying:

- 1) did not receive philanthropy from SBC in the last three years,
- 2) was not promised any future philanthropy from SBC; and/or

- 3) did not hold the mistaken belief that SBC awarded \$18 million in philanthropy or that SBC awarded significant philanthropy to low-income, minority, or other underserved communities

### **Position of Applicants**

Applicants oppose Greenlining's proposal and characterize its statements as a distortion of SBC's record of giving which ignores that the population percentage breakdown of the racial and ethnic clients served by SBC's philanthropy is underrepresented because of the way these organizations report information to SBC. Applicants argue that Greenlining's proposal overlooks the good work that SBC does within and for the communities it serves (not just with money grants) that have earned the goodwill, trust and respect that these supporters expressed. Applicants also argue that it is critical for the Commission to hear the external voices of participants at the PPHs so the record with respect to SBC's record of philanthropic giving will be accurate and complete.

### **Discussion**

Aside from the substantive merits of parties' conflicting claims concerning SBC's philanthropic giving, Greenlining has not justified its proposed measure of automatically giving "very limited weight" to the PPH statements of any speaker in the absence of Greenlining's proposed conditions. Greenlining has not established that an individual's expressions of support for the merger would necessarily have been different if certain assumed conditions were not met. Thus, there is no basis to assign lesser value of a particular participant's opinion merely because the Applicant hasn't demonstrated that they meet those assumed conditions.

Greenlining remains free to argue in its brief as to what weight the Commission should give the various opinions expressed at the PPH, with its supporting reasons. Other parties are also free to challenge Greenlining's

interpretations. Questions relating to what weight, or significance, to be accorded the results of the PPHs is a matter for deliberation by the Commission as it determines the ultimate disposition of this application. Such deliberations should not be prejudged by automatically applying conditions such as those proposed in the Greenlining Motion. Accordingly, the second part of Greenlining's dual motion is denied.

**IT IS RULED that:**

1. Greenlining's motion to compel is hereby granted under the terms as outlined above.
2. Greenlining's motion is hereby denied to give very limited weight to participants expressions of support at the public participation hearings that do not meet Greenlining's specified conditions.

Dated August 2, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge



## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on the Dual Motion of the Greenlining Institute to Compel Response of SBC and "Carefully Scrutinize" Testimony from SBC Public Hearings on all parties of record in this proceeding or their attorneys of record.

Dated August 2, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.